

Decision Notice



Decision 051/2010 Mr Ralph Holland and the Chief Constable of Strathclyde Police

Failure to comply with required timescales

Reference No: 200901970
Decision Date: 25 March 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

This decision considers whether the Chief Constable of Strathclyde Police (Strathclyde Police) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) (and in particular the requisite timescales) in responding to an information request made by Mr Holland.

Background

1. On 17 August 2009, Mr Holland wrote to Strathclyde Police requesting information regarding fixed penalty notices.
2. Having received no response, Mr Holland emailed Strathclyde Police on 30 September 2009 requesting a review of its handling of his request.
3. On 9 October 2009, Strathclyde Police provided a response. They apologised for the delay, provided some information and withheld other information under section 38(1)(b) of FOISA and advised Mr Holland that he was entitled to request a review of this decision.
4. However, in subsequent correspondence, Strathclyde Police indicated that they considered this letter to be a response to Mr Holland's request for review in terms of section 21(4)(c) of FOISA (i.e. having reached a decision in relation to his request where the complaint was that none had been made before).
5. In further correspondence with Strathclyde Police, Mr Holland indicated that he still wanted a review to be carried out in relation to his request. However, Strathclyde Police did not conduct any further review, given their understanding that their letter of 9 October had fulfilled their obligations to conduct a review following receipt of Mr Holland's request of 30 September.
6. On 18 November 2009, Mr Holland wrote to the Commissioner, stating that he was dissatisfied with Strathclyde Police's delay in responding to his request for information and applying for a decision in terms of section 47(1) of FOISA. Mr Holland indicated he was solely dissatisfied with the amount of time taken by Strathclyde Police to provide him with a response.
7. The application was validated by establishing that Mr Holland had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

8. On 1 March 2010, Strathclyde Police were notified in writing that an application had been received from Mr Holland and were invited to comment on the application, as required by section 49(3)(a) of FOISA.
9. Strathclyde Police responded on 12 March 2010, confirming the timescales detailed above in relation to its receipt and response to Mr Holland's request and request for review, and acknowledging that they had failed to provide a response within the required timescale.
10. Strathclyde Police noted that they had received a number of requests from Mr Holland, which contained multiple parts, cross-referred to each other and referred back to previous responses already provided. In addition, they noted that responding to Mr Holland's request of 17 August 2009 involved input from different departments which had delayed their response.

Commissioner's analysis and findings

11. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
12. Strathclyde Police acknowledged that having received Mr Holland's request for information on 17 August 2009, meaning that a response should have been provided on or before 14 September 2009. A response was provided on 9 October 2009.
13. The Commissioner therefore finds that Strathclyde Police failed to respond to Mr Holland's request for information of 17 August 2009 within the 20 working days allowed by section 10(1) of FOISA.
14. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, again subject to exemptions which are not relevant in this case.
15. Where an applicant has made an information request and received no response, and then made a valid request for review, prompting the authority to issue a response, the response given at that stage has the effect of specifying the outcome of a review. This is because section 21(4) of FOISA sets out what an authority might do when it conducts a review:
 - a) confirm a decision with or without modification,
 - b) substitute a decision, or
 - c) reach a decision if none had been made before.

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16. In this case, Strathclyde Police's letter of 9 October 2009, by providing a response to Mr Holland's request, satisfied their obligation to conduct a review in terms of section 21(4)(c). Since this letter was provided within the required 20 working days, Strathclyde Police complied with the requirements of section 21(1) of FOISA.
17. However, section 21(10) of FOISA requires a public authority notifying a person of the outcome of its review to advise them of their right to apply for a decision by the Scottish Information Commissioner, and subsequently to make an appeal to the Court of Session.
18. In this case, Strathclyde Police instead advised Mr Holland that he should request a (further) review if he was dissatisfied with their decision. Their letter suggested that the right of application to the Scottish Information Commissioner would only arise after such a review. Strathclyde Police therefore failed to comply with the requirements of section 21(10) of FOISA.

DECISION

The Commissioner finds that the Chief Constable of Strathclyde Police (Strathclyde Police) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Holland, in particular by failing to respond to Mr Holland's request for information within the timescales laid down in section 10(1) of FOISA. The Commissioner also finds that Strathclyde Police failed to comply with the requirements of section 21(10) of FOISA.

Given that Strathclyde Police provided a response to Mr Holland the Commissioner does not require Strathclyde Police to take any action in response to this technical failure.

Appeal

Should either Mr Ralph Holland or Strathclyde Police wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Claire Sigsworth
Deputy Head of Enforcement
25 March 2010



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request;

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
 - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.

...

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- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.